

## **REMARKS**

This paper is presented in response to the Office Action. By this paper, claims 26 and 28 are amended and claim 27 is cancelled. Claims 1-13, 23, 24, 31-35, 43-46 have been withdrawn by the Examiner as being directed to unrelated species and/or inventions. Claims 14-22, 25, 26, 28-30, and 36-42 are now pending.

Reconsideration of the application is respectfully requested in view of the aforementioned amendments and the following remarks. For the Examiner's convenience and reference, Applicant's remarks are presented in the order in which the corresponding issues were raised in the Office Action.

### **I. General Considerations**

Applicant notes that the remarks and amendments presented herein have been made merely to clarify the claimed embodiments from elements purported by the Examiner to be taught by the cited references. Such remarks, or a lack of remarks, and amendments are not intended to constitute, and should not be construed as, an acquiescence, on the part of the Applicant: as to the purported teachings or prior art status of the cited references; as to the characterization of the cited references advanced by the Examiner; or as to any other assertions, allegations or characterizations made by the Examiner at any time in this case. Applicant reserves the right to challenge the purported teaching and prior art status of the cited references at any appropriate time.

In addition, the remarks herein do not constitute, nor are they intended to be, an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed herein are presented solely by way of example. Consistent with the foregoing, the discussion herein is not intended, and should not be construed, to prejudice or foreclose contemporaneous or future consideration, by the Applicant, of additional or alternative distinctions between the claims of the present application and any references cited by the Examiner, and/or the merits of additional or alternative arguments.

### **II. Obviousness Type Double Patenting Rejection**

The Examiner has rejected claims 26, 29, and 30 under the judicially created doctrine of obviousness-type double patenting in view of claims 1, 2, and 6 of U.S. Patent No. 6,510,260 (the "'260 patent"). While Applicant disagrees that the claims of the present application are unpatentable over the claims of the '260 patent, Applicant has herein amended claim 26 to incorporate the limitations of claim 27 and submits that amended claim 26 is allowable for the same reasons claim 27 was deemed allowable

in the Office Action. Because claims 29 and 30 depend from claim 26, Applicant submits that those claims are likewise in allowable condition.

### **III. Allowed Subject Matter**

The Examiner has indicated that claims 27 and 28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. As discussed at **II.** above, claim 26 has been amended herein to incorporate the limitations of dependent claim 27, and claim 26 and the corresponding dependent claims are thus believed to be in allowable condition.

The Examiner's allowance of claims 14-22, 25, and 36-42 is appreciated. Applicant wishes to thank the Examiner for the careful review and allowance of those claims. Applicant submits the following comments concerning the Examiner's statements of reasons for the indication of allowable subject matter in the Office Action. In general, Applicant agrees with the Examiner that the inventions to which claims 14-22, 25, and 36-42 are directed are patentable over the cited references, but respectfully disagrees with the Examiner's statement of reasons for allowance as set forth in the Office Action.

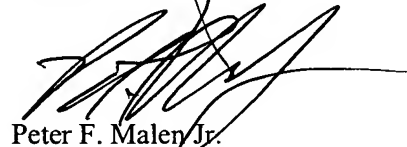
Particularly, Applicant submits that it is improper to characterize a single limitation, or subset of limitations, as constituting the basis for allowance of a claim. Rather, the patentability of a claim is properly determined with reference to the claim as a whole. Accordingly, Applicant does not concede that the reasons for allowable subject matter given by the Examiner are the only reasons that make, or would make, the claim allowable and Applicant does not make any admission or concession concerning the Examiner's statements in the Office Action concerning the allowability of claims 14-22, 25, and 36-42 in view of the cited references.

**CONCLUSION**

In view of the remarks submitted herein, Applicant respectfully submits that each of the pending claims 14-22, 25, 26, 28-30, and 36-42 is in condition for allowance. Therefore, reconsideration of the rejections is requested and allowance of those claims is respectfully solicited. In the event that the Examiner finds any remaining impediment to a prompt allowance of this application that could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate the same with the undersigned attorney.

Dated this 28<sup>th</sup> day of April, 2006.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Peter F. Malen Jr.', is written over the typed name.

Peter F. Malen Jr.  
Attorney for Applicant  
Registration No. 45,576  
**Customer No. 022913**  
Telephone: (801) 533-9800